IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE TENTH DAY OF AUGUST
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE C.V.RAMULU

WRIT PETITION No.140 of 1998

Between:

S.Sreenivasa Rao, S/o Mahalakshmi Naidu,

Age 28 years, R/o Visakhapatnam

..... PETITIONER

AND

1. The Commander, Officer-in-charge, Navy
   Auditorium, Samudrika, Visakhapatnam.
2. The Lieutenant Commander, Asst.Administrator, Samudrika.
3. The Flag Officer Commanding-in-Chief {for CSO
   (P&A)}, Headquarters, Eastern Naval Command,
   Naval Base Post, Visakhapatnam

.....RESPONDENT

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ or order in the nature of Writ of Mandamus by calling for the records pertaining to the issue of Notice for Termination of Job through SM/01 dated 26.11.1997 by the 2nd respondent and to set aside the same by declaring the action of the respondents as illegal, arbitrary, mischievous, misleading, biased, non-application of mind and contrary to the provisions of the Constitution of India and declare the petitioner as entitled to continue in service with all consequential benefits.

Counsel for the Petitioner: Mr. D.NARASING RAO

Counsel for the Respondents.: Mr.P.BHASKARA MOHAN

The Court made the following :

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JUDGMENT:

In this writ petition, the petitioner seeks to quash the termination Order No.SM/01, dated 26-11-1997 of the 2nd respondent and to declare that the petitioner is entitled to continue in service with all consequential benefits.

According to the petitioner, he was appointed as Usher in the Navy Auditorium 'Samudrika' with effect from 1-6-1986 with a pay of Rs.275/-. He used to work from 5.00 p.m. to 1.00 a.m. from Monday to Friday and on Saturday and Sunday from 2.30 p.m. to 1.00 a.m. At the time of filing of the writ petition, his pay was Rs.700/- per month. He was also the General Secretary of Samudrika Naval Auditorium Workers Union. When the respondents were not paying the minimum wages under the Minimum Wages Act,1948 (for short 'the Act'), the Assistant Commissioner of Labour, Circle II, Visakhapatnam passed an Award in Case No.M.W.104 of 1995 for an amount of Rs.74,457-50 to be paid by the respondents to the employees of Samudrika including himself. Ever since filing of the case before the said Authority, the respondents started harassing him and other employees. While the matter stood thus, the respondents had terminated his services through the impugned Proceedings, which reads as under:

> "1. Refer to the appointment letter No.SM/03 dated 28 Jun 86 appointing you as usher in the Navy Auditorium 'Samudrika'.
>
> 2. It has been decided to terminate your service as per clause 3 of the above mentioned letter. You are hereby given one month notice with immediate effect as per the terms of appointment mentioned in the letter ibid.

3. Your service will be terminated on expiry of one month."

The petitioner states that the impugned order of terminating him from service of 'Samudrika' is arbitrary, illegal and colourable exercise of power.

A detailed counter affidavit has been filed by the respondents denying the allegations made by the petitioner. It is stated that the Naval Auditorium named as 'Samudrika' is exclusively meant for Officers and Sailors to be used for Lecturer-cum-Demonstration by senior Defence Officers and conducting seminars, presentations and cultural programmes by Naval personnel. Screening of movies is done for the entertainment purpose of Naval personnel only during free time available. The main objective of 'Samudrika' is to serve as a Lecture-cum-assembly hall and screening of movies is a secondary object, though a welfare activity for the defence service personnel. Samudrika was incurring losses due to expenditure involved on maintenance and a drastic financial restructuring was the only viable option to keep it operational. Therefore, it was decided to prune the staff. All the workers had been employed on casual basis. Their services could be terminated at any time after serving one month's notice. In terms of the appointment order, the petitioner was given one month's notice and his services were terminated since it became unfeasible to sustain the work force of employed casual workers any longer. Therefore, the action of respondents in terminating the services of the petitioner in terms of his appointment order cannot be said to be either arbitrary or illegal.

Heard both sides.

In the writ petition as well as in the counter affidavit, a reference was made as to the Award passed by the Assistant Commissioner of Labour, Circle II, Visakhapatnam indicating that the petitioner is a workman. I see no reason to entertain the writ petition, since the petitioner is a 'workman' and he has an effective and efficacious alternative remedy by way of raising an industrial dispute before the Labour Court. It is noticed that one Karri Appalaraju, a co-workman of the petitioner had already approached the Labour Court-cum-Industrial Tribunal, Visakhapatnam by way of ITID No.56 of 1999 to workout his remedies against the order of termination. Therefore, I am of the considered opinion that the writ petition is devoid of merits and is liable to be dismissed giving liberty to the petitioner to approach the appropriate forum.

Accordingly, the writ petition is dismissed leaving it open to the petitioner to

approach the Labour Court by way of raising an I.D., if he is so advised. No costs.

10th August, 2004

prk

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ASSISTANT REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1. The Commander, Officer-in-charge, Navy Auditorium, Samudrika, Visakhapatnam.
2. The Lieutenant Commander, Asst.Administrator, Samudrika.
3. The Flag Officer Commanding-in-Chief {for CSO (P&A)}, Headquarters, Eastern Naval Command, Naval Base Post, Visakhapatnam

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